Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Bridging the Digital Divide for Low-Income Consumers	)	WC Docket No. 17-287
	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	

REPLY COMMENTS OF TRACFONE WIRELESS, INC.

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EXECUTIVE SUMMARY

As the opening round comments make clear, the Commission's recent *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding contains several proposals for reforming the Lifeline program that have united stakeholders of all political stripes in opposition to their adoption. These proposals – from an outright exclusion of resellers due to their status as non-facilities-based providers, to limitations on the eligible expenses resellers may get reimbursed for the provision of Lifeline services, to the adoption of maximum discount levels that would prevent resellers from providing no-cost service offerings to consumers — detrimentally target the reseller business model and, if adopted, threaten the stability of the entire program by denying nearly three out of every four existing Lifeline recipients their preferred Lifeline services. Each of these proposals, standing alone, would effectively force resellers out of the Lifeline program by making their participation uneconomical; and each of these proposals, if adopted, would imperil a vibrant and competitive Lifeline market currently serving nearly 12 million low-income households through a plethora of competitive offerings first brought about by resellers.

Furthermore, commenters are hardly less united in their opposition to other proposals raised by the NPRM that could unintentionally widen, rather than narrow, the digital divide. Proposals such as the imposition of a self-enforcing budget and the discontinuance of Lifeline support for standalone voice services in all but rural areas of the country threaten to do just that by further dividing our nation's most vulnerable into the digital "haves" and "have-nots," something Chairman Pai spoke so eloquently about at the beginning of his tenure as Chairman.[1]

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[1] *See, e.g.,* Remarks of Chairman Ajit Pai before the Federal Communications Commission, Washington, DC (Jan. 24, 2017), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-343184A1.pdf ("One of the most significant things that I've seen during my time here is that there is a digital divide in this country—between those who can use from cutting-edge communications services and those who do not. I believe one of our core priorities

The Commission should heed the advice of commenters from across the political and ideological spectrum and reject these proposals accordingly.

TracFone appreciates and supports the Commission's ongoing efforts to modernize the Lifeline program and to safeguard it against waste, fraud, and abuse. Although TracFone strongly urges the FCC not to adopt the aforementioned proposals, it is not asking the Commission to do nothing. To the contrary, TracFone believes the NPRM contains several constructive proposals that, if implemented, would go a long way to ensure the Lifeline program's integrity. These proposals already enjoy widespread support from commenters. TracFone thus offers the following roadmap for the steps the Commission should undertake to combat waste, fraud, and abuse:

- ***First,*** the Commission should redouble its oversight of the ongoing implementation of existing reform efforts. To this end, the Commission should ensure the National Verifier is executed timely and faithfully.
- ***Second***, the Commission should discontinue or significantly alter certain anti-free-market reforms of previous Commissions. Specifically, the Commission should discontinue minimum service standards or, at a minimum, adopt TracFone's "units" proposal to allow provider flexibility in meeting the standards and promote consumer choice.
- ***Third,*** the Commission should consider conduct-based standards to weed out bad actors in a manner that is technology and business-model neutral.

going forward should be to close that divide—to do what's necessary to help the private sector build networks, send signals, and distribute information to American consumers, regardless of race, gender, religion, sexual orientation, or anything else. We must work to bring the benefits of the digital age to all Americans.").

Adoption of these measures will unequivocally demonstrate the FCC's ongoing commitment to a competitive and vibrant Lifeline marketplace that is free of waste and fraud without needlessly jeopardizing the services millions of low-income Americans have come to rely upon. TracFone remains committed to working with the Commission in making the Lifeline program an effective weapon in America's war on poverty, and it stands ready to share its operational experience as the leading Lifeline provider to assist the FCC in undertaking this important effort.

I. INTRODUCTION

As TracFone explained in its opening round comments, and as the record makes resoundingly clear, proposals in the Federal Communications Commission's ("Commission") *Notice of Proposed Rulemaking* ("NPRM") regarding reform of the federal Universal Service Fund Lifeline program targeting non-facilities-based providers, or "resellers,"[2] however well-intended they might be, are a misguided approach to Lifeline reform. These proposals, which include a direct ban on non-facilities-based providers' participation in the Lifeline program, as well as the "facilities-based pass through" and "maximum discount level" proposals, all share a common trait: they unfairly single out resellers' business model for exclusion. They have also drawn the criticism and vocal objection of dozens of commenters in this proceeding representing a diversity of interests, including providers (both facilities-based and non-facilities-based), consumer advocacy groups, right-leaning policy think tanks, and public utility commissions. As the record makes clear, the NPRM's reseller-targeted proposals represent an anti-free-market, heavily interventionist approach to an otherwise healthy and competitive Lifeline ecosystem—a drastic departure from the current Commission's admirable record so far in returning to a light-touch regulatory regime. Moreover, as TracFone explained in its comments, the FCC should not justify these negative proposals based on a highly flawed 2017 Government Accountability Office report.

In addition to rejecting reseller-targeting proposals, the Commission also should heed the near-unanimous advice of commenters, again representing a wide variety of interests from across the political spectrum, who are concerned about the digital divide. Several proposals, such as

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2 *Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, 2017 WL 6015800 (Dec. 1, 2017) ("NPRM").

adopting a self-enforcing budget cap and discontinuing voice-only subsidies for non-rural areas, likely would produce the unintended consequences of widening, rather than narrowing, the digital divide, and harming consumers most in need of Lifeline services, including veterans, the elderly, single mothers, the disabled, the job seeker, and others.

Although TracFone opposes the aforementioned proposals, especially those that exclude or have the effect of excluding resellers from the Lifeline program, it appreciates and supports the Commission's ongoing efforts to root out waste, fraud, and abuse and strengthen the program's overall efficiency and integrity. TracFone remains committed to serve as the Commission's partner on Lifeline reform and change the program in ways that are tailored, methodical, and transparent. TracFone concludes these reply comments with a roadmap it believes the Commission should follow to further strengthen the efficiency, effectiveness, and integrity of the Lifeline program.

II. THE NPRM TAKES THE WRONG APPROACH TO ACHIEVE CHAIRMAN PAI'S GOALS FOR LIFELINE REFORM

Thwarting reseller participation in Lifeline—either through an outright ban or through the adoption of policies that target resellers' business models—would negatively impact the program. TracFone made clear in its opening round comments that eliminating non-facilities-based providers from the Lifeline program, whether directly by excluding them due to their status as non-facilities-based providers, or indirectly by eliminating their current business practices, would be a crushing blow. The record makes clear that the continued success of the Lifeline program, and the laudable policy objectives it serves, depend on the participation of resellers, and that the Commission therefore should not: (i) categorically eliminate resellers from the Lifeline program; (ii) limit Lifeline payments to resellers to the amounts paid to wholesale carriers; or (iii) impose a maximum discount level for Lifeline support.

First, the Commission should not categorically eliminate resellers from the Lifeline program. Commenters from all sides of the Lifeline policy debate resoundingly agree with TracFone that eliminating resellers would undermine the purposes of the Lifeline program and harm the consumers who depend on it without materially advancing the Commission's stated policy objectives.[3] Given that the vast majority of Lifeline customers obtain service from non-facilities-based providers, commenters from across the nation explained that a facilities-based requirement for Lifeline would "leave many Lifeline participants with less competitive choice, reducing innovation and quality in the program, and could leave many participants and areas of the country with no Lifeline provider at all."[4] Simply put, the record is clear that "[t]he elimination of non-facilities-based service has the very real potential of gutting the Lifeline program."[5]

Further, opening round comments affirm that eliminating resellers from the Lifeline program will not in fact meet the Commission's policy objectives of eliminating waste, fraud, and abuse and encouraging broadband deployment. The record makes clear that there is "no

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3 *See, e.g.,* Comments of the National Association of State Utility Consumer Advocates ("NASUCA"), WC Docket No. 17-287, *et. al.*, at 8-13 (filed Feb. 21, 2018); Comments of INCOMPAS, WC Docket No. 17-287, *et. al.*, at 4-7 (filed Feb. 21, 2018); Comments of the Florida Public Service Commission, WC Docket No. 17-287, *et. al.*, at 2-3 (filed Feb. 21, 2018); Comments of the Public Utility Division of the Oklahoma Corporation Commission, WC Docket No. 17-287, *et. al.*, at 4-7 (filed Feb. 21, 2018); Comments of Verizon, WC Docket No. 17-287, *et. al.*, at 8-10 (filed Feb. 21, 2018); Comments of Sprint, WC Docket No. 17-287, *et. al.*, at 14-19 (filed Feb. 21, 2018); Comments of CTIA, WC Docket No. 17-287, *et. al.*, at 10-21 (filed Feb. 21, 2018); Comments of the National Association of Regulatory Utility Commissioners ("NARUC"), WC Docket No. 17-287, *et. al.*, at 18-22 (filed Feb. 21, 2018); Comments of the United States Telecom Association ("USTelecom"), WC Docket No. 17-287, *et. al.*, at 2 (filed Feb. 21, 2018).

4 Comments of Communications Workers of America, WC Docket No. 17-287, *et. al.*, at 4 (filed Feb. 21, 2018). *See also, e.g.,* CTIA Comments at 14 ("[I]t is clear that those Americans most in need of Lifeline's support for connectivity rely predominantly on and benefit from innovative and competitive mobile wireless services – and non-facilities based wireless providers have played, and continue to play, a critical role in offering such services to those low-income Americans most in need."); Joint Comments of Pennsylvania's Low Income Consumers, Service Providers, Organizations, and Consumer Rights Groups, WC Docket No. 17-287, *et. al.*, at 1 (filed Feb. 21, 2018) ("If the FCC were to impose a facilities-based requirement, the result would be to strand potentially hundreds of thousands of current Lifeline customers, leaving them without access to basic communication service.").

5 NARUC Comments at 20.

credible evidence that eliminating non-facilities-based service will spur additional investment in voice-and broadband-capable networks,"[6] and that "the proposed elimination of resellers from the Lifeline program would not materially further the deployment of broadband infrastructure, because revenue from resellers already contributes to facilities-based carriers' deployment of broadband facilities."[7] According to CTIA, "seven different econometric models showed that the impact of greater MVNO activity (as measured by MVNO subscribers) is to increase investment."[8] Although some commentators state that banning resellers from participation would advance the FCC's goals, these commenters fail to provide any evidence showing a likelihood that implementing the proposal would reduce WFA or encourage investment in broadband-capable networks.[9] But even if the reseller ban would further the Commission's policy goals, it remains the case that "[t]here are better ways to promote build-out and limit abuse without limiting the options of families that have few choices to begin with."[10] There is simply no credible justification for eliminating resellers from the program, and the Commission should decline to do so.

Likewise, the Commission should reject NTCH's call to alter the forbearance previously granted to TracFone to enable non-facilities-based providers to enter the Lifeline program.[11] To advance this argument, NTCH merely submitted copy of a 2012 petition to rescind the section

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6 *Id*. at 21.

7 USTelecom Comments at 2.

8 CTIA Comments at 14-15 (quotation marks omitted).

9 *See* Comments of ATN International, Inc., WC Docket No. 17-287, *et. al*., at 2-4 (filed Feb. 21, 2018); Comments of the Public Service Commission of the District of Columbia, WC Docket No. 17-287, *et. al*., at 5-9 (filed Feb. 21, 2018).

10 Comments of Daniel Lyons, Associate Professor of Law, Boston College Law School, WC Docket No. 17-287, *et. al*., at 3 (filed Feb. 21, 2018).

11 *See* Comments of NTCH, Inc., WC Docket No. 17-287, *et. al*., at 1-2 (filed Jan. 24, 2018).

214(e) forbearance granted to wireless resellers.[12] The FCC saw no reason to take action on this petition five years ago, and NTCH fails to show why it should now be addressed in this tangential proceeding. On the merits, NTCH makes no showing that the findings the FCC determined mandated forbearance in 2005 no longer hold true. It provides little evidentiary support for its brash claim that "the preponderance – if not the unanimity – of the carriers involved in [abusive] practices are non-facilities-based."[13] Further, NTCH's stale assertions predate the implementation of major Lifeline reforms designed to reduce waste, fraud, and abuse.

As for NTCH's argument that the FCC should rescind section 214(e) forbearance for wireless resellers because it is against the public interest to allow foreign-owned resellers to become eligible for receipt of Lifeline subsidies without complying with the regulatory requirements imposed by section 310(b), it ignores the plain terms of the statute. Section 310(b)'s foreign ownership restriction only applies to broadcast, common carrier and aeronautical licenses, and the FCC has made clear that it is inapplicable in other contexts.[14] Section 310(b) considerations are simply not relevant to the FCC's determination that forbearing from the facilities requirement of section 214(e) for wireless resellers is in the public interest, including because these companies expand the participation of qualified consumers in Lifeline

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12 *Id.* at Attachment ("NTCH Petition").

13 NTCH Petition at 10. *See also* Comments of TracFone Wireless, Inc., WC Docket No. 17-287, *et. al.*, at 33-35 (filed Feb. 21, 2018).

14 *See, e.g., Primosphere Limited Partnership v. FCC,* 2003 WL 472239, *1 (D.C. Cir. Feb. 21, 2003) ("Commission precedent establishes that a subscription-based service is not subject to the foreign ownership restrictions of 47 U.S.C. § 310(b)(4)."); *In re Application of MCI Telecommunications Corp.*, 14 FCC Rcd 11077 (May 19, 1999) (affirming decision by International Bureau that "none of the provisions of Section 310(b) … applies to MCI's application" because its license would not fall under any of the 310(b) regulatory classifications).

thus serving the statutory goal of providing telecommunications access to low-income consumers, which the FCC found outweighed the facilities requirement.[15]

Finally, and separately, TracFone explained at length in its opening round comments that the ability of resellers to continue participating in the Lifeline program is unaffected by the Commission's regulatory classification of broadband services, and does not repeat those arguments here. However, TracFone agrees with USTelecom's recommendation to delete the reference to broadband Internet access service in Section 54.101 of the FCC's rules relating to the high-cost program.[16] TracFone notes that this clerical change would not affect services designated for Lifeline program support under Section 54.400, which appropriately includes both voice telephony and broadband Internet access services.[17] Nor should the Commission amend this designation. As previously explained, the FCC has authority under Section 254 of the Communications Act, as well as ancillary authority, to use Lifeline universal service funds to provide Americans access to broadband—even as a standalone service—at just, reasonable, and affordable rates.[18] And millions of Lifeline subscribers depend upon wireless resellers for broadband access.

Second, the Commission should not limit Lifeline support payments to resellers to the amounts paid to wholesale carriers. Even if it does not adopt an outright reseller ban, the NPRM proposes to force non-facilities-based providers out of the market in a different way: by limiting payments to resellers to the amounts paid to their underlying carriers. As TracFone and other commenters made clear in their opening round comments, this proposal is misguided as a

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15 *See Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095, ¶¶ 23-24 (2005).

16 *See* USTelecom Comments at 2-3. *See generally* 47 C.F.R. § 54.101(a)(2).

17 *See* 47 C.F.R. § 54.400(n).

18 *See* TracFone Comments at 70-74.

matter of policy. Lifeline providers incur multiple costs to offer Lifeline services, including, where applicable, "customer billing, basic labor, equipment and facilities, outreach and marketing, as well as compliance with Lifeline rules," among others.[19] The Commission has expressly condoned the use of Lifeline funds for these purposes, concluding that these are "costs that every carrier assumes in doing business in today's market."[20] If providers may only use Lifeline subsidies for one category of these costs, they then would be stripped of their ability to provide diverse and affordable service offerings such as no-cost service packages.

The practical result of this policy, like the categorical reseller exclusion, is the complete collapse of the Lifeline marketplace caused by the effective elimination of resellers. Without being able to cover their costs, resellers would be unable to provide the innovative service offerings that allow them to compete in the Lifeline market. Most if not all non-facilities-based service providers would be forced to exit the market completely. Indeed, as one commenter points out, under the pass-through proposal, "a reseller simply could not exist."[21] Absent the innovative and competitive service offerings from resellers, Lifeline customers would be left with fewer service options, may be forced to pay a co-pay for services that would price them out of the market, and in many places would be left with one or zero options of wireless Lifeline service providers.

Further, the proposed pass-through proposal facially discriminates against resellers, limiting the uses of the payments that they receive while imposing no such limits on the Lifeline services provided by facilities-based providers. Indeed, under the Commission's proposal,

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[19] *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶ 248 (2012) ("*2012 Lifeline Reform Order*").

[20] *Id*. ¶ 248.

[21] Comments of Open Technology Institute, WC Docket No. 17-287, *et. al.*, at 22 (filed Feb. 21, 2018).

facilities-based-providers, who do not obtain services from underlying carriers, would continue to receive unrestricted Lifeline subsidies, and would remain free to use the funds for other costs related to the provision of Lifeline services. Congress and the Administration, which have repeatedly stressed technology neutrality in the application of rules adopted by the FCC, are owed an explanation for this blatant discrimination against Lifeline resellers.[22] Again, the GAO report cannot be the justification for this draconian proposal.

Moreover, as TracFone and others made clear in opening comments, this proposal completely contradicts Section 254(e) of the Communications Act, which provides that carriers may use Lifeline support for "facilities *and* services."[23] By limiting Lifeline support to the amounts paid to underlying carriers, the Commission would be impermissibly changing the scope of the statute to eliminate the provision of services. As NASUCA points out, "[t]he current NPRM's reading of the second sentence of Section 254(e) is in conflict with the FCC's prior, detailed statutory analysis and identification of Congressional intent."[24] The Commission should decline to adopt its reseller pass-through proposal.

Third, the Commission should not impose a maximum discount level for Lifeline services. Imposing a maximum discount level per Lifeline subscriber, thereby requiring costs above the maximum level to be borne by the subscriber, is another proposal the NPRM puts forth that would significantly harm the Lifeline program by hampering the business model of non-

22 Indeed, in the recently enacted Ray Baum Act that was incorporated into the 2018 Omnibus spending bill, Congress created a new requirement for the FCC to publish, on a biennial basis, a report on the state of the communications marketplace that assess the state of competition as well as the state of deployment of communications capabilities "regardless of the technology used for such deployment." Consolidated Appropriations Act of 2018, at Division P, Sec. 401 (Mar. 23, 2018). There is a clear assumption that the FCC would refrain from adopting rules that are not technology neutral.

23 *Id*. (emphasis in original). *See also* NASUCA Comments at 9, Comments of ITTA – The Voice of America's Broadband Providers, WC Docket No. 17-287, *et. al.*, at 4 n.15 (filed Feb. 21, 2018).

24 NASUCA Comments at 9.

facilities-based providers. Commenters overwhelmingly agreed with TracFone that a maximum discount level undermines the Lifeline program's objectives and would be detrimental for consumers.[25] The record makes clear that the "skin in the game" proposal is "harmful and antithetical to Lifeline's mission."[26]

The record in this proceeding with respect to the dangers of a maximum discount level is consistent not only with TracFone's position in its opening round comments, but of the Commission's own findings on the ways in which a maximum discount level would harm Lifeline subscribers and undermine the goals of the program. Indeed, as CTIA explained, "[t]he Commission has previously concluded that requiring low-income consumers to pay a minimum charge for service creates difficulties for particularly hard-hit communities such as the un-banked. As the Commission noted, '[e]ven a minimal one-time fee could be a significant barrier for many of the intended recipients of the program.'"[27] The harm could be especially pronounced in rural areas: the National Grange noted in its comments that 35 rural counties in the United States have no bank at all, while 115 are served by only one branch.[28]

In addition to disproportionately harming rural customers, the imposition of a maximum discount level – in conjunction with the exclusion of resellers and the adoption of a self-enforcing budget mechanism – threatens to be devastating for residents in areas still recovering from the series of deadly hurricanes that hit the United States in 2017. The National Hispanic Media Coalition points out that at 60 percent, Lifeline participation by eligible subscribers in

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25 *See, e.g.,* Comments of the Michigan Public Service Commission, WC Docket No. 17-287, *et. al.*, at 12-13 (filed Feb. 21, 2018); NASUCA Comments at 26-29; INCOMPAS Comments at 7-12; Sprint Comments at 8-12; CTIA Comments at 22-23; Communications Workers of America Comments at 3-4.

26 Comments of the Oregon Citizens Utility Board, WC Docket No. 17-287, *et. al.*, at 3 (filed Feb. 21, 2018).

27 CTIA Comments at 22-23.

28 Comments of National Grange, WC Docket No. 17-287, *et. al.*, at 3 (filed Feb. 21, 2018).

Puerto Rico is higher than any other state or territory.[29] Accordingly, the Coalition asserts that adoption of the sweeping proposals in the NPRM "would result in far-reaching consequences for Lifeline recipients living in these devastated areas and hamper recovery efforts."[30]

Moreover, the record makes clear that imposing a maximum discount level not only "will directly undermine the Commission's oft-expressed goal of bridging the digital divide," but in so doing "will not prevent waste, fraud and abuse in the Lifeline program" [31] as the NPRM suggests. Although some commenters assert that adopting a maximum discount level would benefit the program—for instance, by controlling Lifeline spending,[32] or, quite inexplicably, by "assist[ing] in directing the support to those subscribers that have the highest level of need for the service"[33] —these rationales should be rejected. Imposing mandatory co-pays as a means of Lifeline cost control, like the imposition of a self-enforcing budget as discussed below, would endeavor to save money by kicking Lifeline participants out of the program. Although fiscal responsibility in the Lifeline program is a laudable goal, it should not come at the expense of the program's beneficiaries and their continued ability to receive Lifeline services. Further, the notion that imposing a copay would best serve the neediest populations is simply untenable – because many Lifeline subscribers cannot afford a copay, the program's neediest participants would be the first to go if a maximum discount level were imposed.

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[29] Comments of the National Hispanic Media Coalition, WC Docket No. 17-287, *et. al.*, at 28 (filed Feb. 21, 2018).

[30] *Id*.

[31] Sprint Comments at 8.

[32] *See* Comments of the Missouri Public Service Commission, WC Docket No. 17-287, *et. al.*, at 11 (filed Jan. 23, 2018); Comments of the Information Technology and Innovation Foundation, WC Docket No. 17-287, *et. al.*, at 7 (filed Feb. 21, 2018).

[33] Oklahoma Corporation Commission Comments at 15.

Because a maximum discount level threatens to deepen the digital divide without providing any meaningful public interest benefits for the Lifeline program, the Commission should reject this proposal.

A. Other NPRM proposals could further widen, rather than narrow, the digital divide.

To avoid eliminating or significantly hampering the provision of services by Lifeline providers serving more than 70 percent of current Lifeline subscribers, it is essential that the Commission reverse course on its proposals to categorically eliminate non-facilities-based providers from the Lifeline program or otherwise adopt policies that target and hinder the business models of non-facilities-based providers. However, to ensure that the Lifeline program continues to meet its statutory objectives of providing affordable access to telecommunications services for those who need it most, the Commission must not stop there. Several other proposals within the NPRM present a severe threat to the continued health of the Lifeline program and the ability of subscribers to receive essential telecommunications services at affordable rates.

First, the Commission should discontinue the phase-down of Lifeline support for voice-only services in all areas of the nation. As TracFone explained in its opening round comments, continuing the planned phase-down of Lifeline support for standalone voice services would harm consumers without meeting the Commission's policy objectives. The record makes clear that the removal of standalone voice services from the market will require subscribers to buy bundled broadband services in order to obtain voice services, "which even with a $9.25 discount, might well be unaffordable."[34] As with the maximum discount level, the phase-out

[34] NARUC Comments at 24.

may force eligible subscribers interested in standalone voice services to exit the market due to inability to pay.

Several commenters emphasized just how essential voice-only offerings remain to Lifeline subscribers, and underscored the harm that eliminating support for this service option would cause these consumers. For example, a coalition of consumer rights organizations and other entities from Pennsylvania explained that "[v]oice-only telecommunication service is and continues to be the most accessible form of communication service. It is, quite literally, a lifeline for low income households who cannot afford the upfront costs associated with more advanced service – ensuring that they are not stranded or isolated from their community."[35] Because of the importance of voice-only offerings to Lifeline subscribers, "[e]liminating voice only Lifeline options would force low income families in rural and urban areas alike to choose between connecting with their community and accessing medical care, rent, heat, and other critical services. Forcing such a choice is not only untenable, it is also dangerous."[36]

Eliminating the phase-down for voice-only services not only would be detrimental for consumers that depend on these services, but would unnecessarily distort and interfere with competition in the market for Lifeline services. Indeed, "maintaining voice-only Lifeline service promotes consumer choice."[37] The Commission should take the pro-competitive route and restore the ability of Lifeline providers *to offer a range of service offerings that meet the needs of their subscribers and ensure access to essential services.*

[35] Joint Comments of Pennsylvania's Low Income Consumers, Service Providers, Organizations, and Consumer Rights Advocates WC Docket No. 17-287, *et. al.*, at 3 (filed Jan. 24, 2018).

[36] *Id*. at 4.

[37] NARUC Comments at 24.

To the extent the Commission continues the phase-down of voice-only services, it should reject the NPRM's proposal to discriminate against non-rural Lifeline customers by discontinuing the phase-down in rural areas exclusively. As one commenter explained, "[e]stablishing a preference for participants in rural areas over those in urban areas . . . risks undermining the core objectives of the Lifeline program by replacing need-based criteria with an arbitrary geographic lottery."[38] Further, "[p]itting low-income families from rural and urban areas against each other is not the right approach and does nothing to advance to core goals of the Lifeline program."[39] The Commission should refocus its efforts on ensuring Lifeline services are available to *all* consumers, not just those residing in urban areas, and should decline to selectively discontinue the voice-only phase-down.

Second, the Commission should decline to impose a self-enforcing budget mechanism, or, in the alternative, should ensure that any such mechanism be structured to prevent service disruptions and allow for organic program growth. Opening round comments bear out TracFone's assertions that imposing a self-enforcing budget mechanism would thwart the objectives of the Lifeline program. As Sprint points out, although "[t]he Commission has repeatedly emphasized that bridging the digital divide is its first priority, . . . it is difficult to reconcile the Commission's stated primary goal with the proposed self-enforcing cap on the Lifeline fund."[40] This is because, as the Commission itself has found, "a cap could result in

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[38] Comments of the Hispanic Technology & Telecommunications Partnership, WC Docket No. 17-287, *et. al.*, at 2 (filed Feb. 21, 2018).

[39] *Id.*

[40] Sprint Comments at 3-4.

rationing of available support to the most economically vulnerable end users, and raises worries that eligible consumers would be denied service."[41]

Further, the record also supports TracFone's assertions that the cap the NPRM proposes would have disastrous consequences for the Lifeline program. One commenter noted that the NPRM "suggests an annual cap for Lifeline disbursements that is more excessively punitive than any fiscal measure in the program's history," and "could result in rationing that leaves Lifeline unable to meet the needs of low-income Americans."[42] Not only does "the notion of a self-enforcing hard budget cap run[] against the objective of a 'safety net' program to provide support for eligible low-income persons in need," but the proposal also presents "dozens of practical implementation problems."[43] It is simply infeasible for the Commission to impose a self-enforcing cap on the Lifeline program—especially one based on historic disbursement levels from a decade ago—and expect the health of the program and the availability of services to interested and eligible subscribers to remain intact.

To the extent the Commission imposes a self-enforcing budget mechanism, the amount should be set at a level that allows for program growth and the mechanism should be implemented to minimize disruptions to Lifeline services. Several opening round comments are instructive in this regard. First, commenters make clear that the cap must be set not based on historic disbursement levels, but in a forward-looking manner that leaves room for organic growth of the program.[44] Further, consistent with the proposals set forth by Q Link, any self-

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41 *Id*. (citing *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, ¶ 399 (2016)).

42 Open Technology Institute Comments at 29.

43 Comments of Randolph J. May, President, the Free State Foundation, WC Docket No. 17-287, *et. al.*, at 5 (filed Feb. 21, 2018).

44 NARUC Comments at 27-28; Comments of the Minnesota Department of Commerce and Minnesota Public Utilities Commission, WC Docket No. 17-287, *et. al.*, at 10 (filed Jan. 24, 2018); Comments of Q Link Wireless,

enforcing budget mechanism should "allow unspent funds committed to the Lifeline program to carryover to the following year"[45] and "provide the industry with 12 months from when support level reductions are announced to when those reductions become effective."[46] TracFone also supports the proposal put forth by Q Link and USTelecom that the Commission should "pair budget-driven support reduction with at least proportionate relief from minimum service requirements,"[47] to the extent minimum service standards are not eliminated consistent with TracFone's comments below.

B. The NPRM takes a heavy-handed regulatory approach that is both unsupported by evidence and anticompetitive.

As the opening round comments make clear, the aforementioned proposals are misguided as a matter of policy. Equally troubling and worth reiterating, however, is the fact that the Commission failed to develop its proposed reforms consistent with the light touch, analytical, and pro-competitive approach to which this Commission is assiduously committed.

Although the NPRM makes sweeping proposals that would fundamentally alter the Lifeline program, the Commission fails to undertake the types of economic analysis and evidence-based policymaking that Chairman Pai has made a priority during his tenure at the Commission. As the Chairman has explained, "the FCC should always take economics seriously, because the alternative is regulation by anecdote."[48] Specifically, "[t]he FCC should have the economic experts it needs to identify market failures and study whether the benefits of

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LLC, WC Docket No. 17-287, *et. al.*, at 18-24 (filed Feb. 21, 2018); Florida Public Service Commission Comments at 7-8.

45 Q Link Comments at 22.

46 *Id.* at 23

47 *Id.* at 23-24; USTelecom Comments at 8-10.

48 Remarks of Chairman Ajit Pai at the Hudson Institute, "The Importance of Economic Analysis at the FCC," (Apr. 5, 2017), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-344248A1.pdf.

Commission action would be warranted given the costs."[49] Chairman Pai has called this process "essential," warning that "[o]therwise, well-intentioned but unsound policies can become unintended barriers to growth and innovation."[50]

Yet with this NPRM, the Commission has thus far failed to observe Chairman Pai's own call for rigorousness in economic analysis. It performs no cost-benefit analysis on its proposed rules. It enlists little evidence demonstrating that the proposed changes would meet the Commission's policy objectives of encouraging broadband deployment and curbing Lifeline waste, fraud, and abuse. Where the NPRM cites any evidence at all, it is inapposite—such as the selective and misleading use of statistics about the affordability of wireline offerings to support the assertion that rural consumers need voice-only service subsidies more than their urban counterparts,[51] or methodologically flawed—such as the Government Accountability Office report on Lifeline waste, fraud and abuse upon which the Commission relies.[52] Indeed, data concerning broadband deployment economics and historical violation of the Lifeline program rules suggest that the Commission's proposals would *not* serve these objectives. Moreover, where the Commission has in its possession relevant information, such as results from program-wide audits through In-Depth Validations, the Payment Quality Assurance process, and the Beneficiary and Contributor Audit Program, it has curiously avoided using these data

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49 *Id.*

50 *Id.*

51 *See* NPRM ¶ 76; TracFone Comments at 57-58.

52 *See Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017) (Statement of Chairman Ajit Pai) (explaining that the GAO report "discovered 1,234,929 Lifeline subscribers who apparently were not eligible to participate in the program as well as 6,378 individuals who apparently reenrolled after being reported dead" and that such program abuse is "a non-starter for the FCC").

demonstrating which Lifeline carriers have compliance issues to support its sweeping proposal to exclude all non-facilities-based providers as a means of addressing waste, fraud, and abuse.

Finally, absent the identification of market failure and the economic analysis to support such a conclusion, the Commission has seemingly refused to provide any justification for the use of heavy-handed regulatory intervention as a means to address waste, fraud, and abuse in the market for Lifeline services. Combined with a lack of rigorous cost-benefit analysis supporting the exclusion of resellers, the Commission has therefore created a scenario where heavy-handed government intervention is proposed which would hinder competition and reduce consumer choice – something that is not only unprecedented, but directly against Chairman Pai's regulatory philosophy. Although a heavily regulated, shrunken Lifeline program will certainly produce fewer instances of waste, fraud, and abuse, the human cost of such an approach – especially in the ways it impacts veterans, the elderly, the job seeker, and other vulnerable populations that rely on this service day-in and day-out – cannot be overstated. The current proceeding for Lifeline reform can thus serve as a textbook example for why the FCC's rulemaking process must be infused with a healthy dose of evidence-based decision-making, further supported by economic analysis that accurately identifies whether market failure exists to warrant government intervention, as well as whether the specific regulation chosen to address the market failure is adequately supported by sound cost-benefit analysis.

III. THE COMMISSION SHOULD REFOCUS ITS LIFELINE REFORM EFFORTS ON IMPLEMENTING EXISTING REFORMS AND MAKING APPROPRIATELY TAILORED CHANGES TO THE PROGRAM

As one commenter explained in its opening round comments, the Commission's goal of eliminating waste, fraud, and abuse from the Lifeline program "must be balanced against the reason for having a Lifeline program in the first place."[53] Eliminating or significantly hampering the providers serving more than 70 percent of Lifeline subscribers fails to reflect this balance, as it promises to undermine the Lifeline marketplace and make it more difficult or impossible for millions of eligible subscribers to receive Lifeline services without any reliable indication that this sweeping regulatory intervention will actually curb waste and fraud.

The Commission should refocus its Lifeline reform efforts on ensuring that reforms it has already adopted are being implemented correctly. Indeed, "[s]everal measures implemented by the FCC in recent years have dramatically reduced incidents of waste, fraud, and abuse. This is evidenced by the significant drop in the cost of Lifeline program from $2.1 billion in 2012 to $1.3 billion in 2017. Moreover, the FCC is currently in the process of bringing up the national verifier –which should reduce incidents of fraud further."[54] A renewed focus on these existing reforms, in conjunction with the adoption of additional targeted reforms designed to improve the program without categorically eliminating providers or imposing other sweeping restrictions, will best preserve the health and integrity of the Lifeline program.

A. The Commission should focus on implementation of the National Verifier.

The record makes clear that proper implementation of the National Verifier, which Congress expects, is an important objective that will go a long way toward eliminating Lifeline waste, fraud, and abuse. TracFone agrees with Sprint that "one of the best means of ensuring the integrity and effectiveness of the Lifeline program is through the deployment of the National Verifier system,"[55] and that, "[i]f designed and implemented properly, the National Verifier should effectively screen out ineligible end users, without drastically undermining affordable

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[53] NARUC Comments at 22.

[54] *Id*.

[55] Sprint Comments at 2

access to critical voice and broadband services by eligible low-income consumers."[56] Simply put, as USTelecom explained, successful implementation of the National Verifier "will cure the clear majority of the issues raised in the [NPRM]."[57]

TracFone concurs with certain proposals of other commenters with respect to the implementation of the National Verifier. Specifically, TracFone agrees with USTelecom that the Commission should decline to delay implementation of the National Verifier due to delayed access to state databases or unresolved administrative issues.[58] TracFone also agrees with Sprint that the Commission should allow states to leverage commercially available data sources if they cannot provide access to their eligibility databases.[59]

To ensure successful implementation of the National Verifier, TracFone reiterates that the Commission must make necessary adjustments—and exercise necessary oversight over USAC—to ensure that it works as intended. In the initial comments, TracFone has already urged the Commission to: (i) require USAC to provide an Application Programming Interface ("API")[60]; (ii) increase the number of application channels; (iii) carefully evaluate the impact of the changes on the first six states and roll back or cure issues before extending the program; and (iv) evaluate and streamline the application form that has recently been extended from six pages to eight pages.

However, the barriers to customer enrollment do not end there. With each new iteration of USAC's National Verifier plan come more challenges for Lifeline-eligible households to

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56 *Id*.

57 USTelecom Comments at 2.

58 *Id*. at 6.

59 Sprint Comments at 3.

60 *See* Q Link Comments at 8-12.

obtain and maintain the service. TracFone has identified an extensive list of technical and operational issues that are poised to make participation in the Lifeline program more difficult. TracFone remains very concerned that USAC is making ill-informed decisions that, if implemented, would artificially reduce the size of the Lifeline program by making program participation a more arduous, time-consuming, and bureaucratic experience without any corresponding benefits to detect and reduce waste and fraud. The FCC must conduct thorough oversight of USAC's National Verifier implementation efforts and encourage the company to work with stakeholders such as TracFone that possesses both decades of operational experiences as well as vested interests in the success of the National Verifier.

B. The Commission should eliminate or adjust its minimum service standards regime to ensure maximum flexibility and value for consumers.

To ensure that that high-quality telecommunications services remain accessible and affordable for low-income consumers, the Commission should eliminate the minimum service standards regime adopted in the *2016 Lifeline Reform Order*.[61] The acceleration of minimum service standards, as currently established by the schedule set forth in Section 54.408 of the Commission's rules,[62] is too steep to sustain no-cost service offerings like those provided by TracFone. For instance, beginning December 1, 2018, Lifeline providers must offer 2 GB of data per month.[63] As the minimum service standards increase, it becomes difficult and even impossible for providers to offer services at no cost to the consumer or at prices low enough to enable eligible customers to take advantage of the Lifeline program. The practical result of this

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61 *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, ¶¶ 69-113 (2016).

62 47 C.F.R. § 54.408.

63 TracFone currently offers its subscribers 1 GB of data per month.

is that the minimum service standards, although designed to protect consumers, actually prevent eligible subscribers from obtaining essential Lifeline services.

The Commission should eliminate Section 54.408 of its rules and allow the robust competitive market for Lifeline services to ensure that the offerings available to low-income consumers are both affordable and high quality. In the alternative, the Commission should adopt TracFone's "units" proposal as a means to allow providers to meet minimum service standards. As Q Link aptly points out, the units proposal is even more essential given the Commission's phase-down of voice-only services and its reclassification of broadband internet access service as an information service.[64] Adoption of the units proposal will give providers the flexibility they need to provide service to their customers, will promote consumer choice, and will ensure that all subscribers have access to high-quality Lifeline services.

C. The Commission should combat waste, fraud, and abuse through conduct-based standards for Lifeline providers.

In addition to making sure existing reforms are working correctly, the Commission should adopt TracFone's proposal for "a 'conduct-based approach' to Lifeline eligibility that uses various existing audit processes to determine a provider's continuing participation in the Lifeline program."[65]

The record reflects significant support for the idea that "the FCC has other, more targeted regulatory tools available to address and deter fraud"[66] than the sweeping, reseller-focused proposals put forth in the NPRM. Further, multiple and diverse commenters agreed that

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64 Q Link Comments at 43 ("[A]s the FCC phases down voice-only service, it could put its statutory basis for promoting broadband at risk, in light of its recent decision to reclassify mobile broadband internet access service as an information service. The Commission can address that issue by adopting the "units" proposal.").

65 TracFone Comments at 50.

66 NASUCA Comments at 20.

TracFone's conduct-based approach, specifically, would be a valuable way to deter waste, fraud, and abuse without categorically eliminating providers or unnecessarily harming consumers.[67] One commenter remarked that "the 'conduct-based requirements' advanced by TracFone provide a reasonable framework for identifying procedures that could improve accuracy and accountability."[68] The Commission should thus adopt TracFone's proposal to base continued Lifeline participation on providers' performance on various auditing tools at the Commission's disposal, consistent with the chart provided in TracFone's opening round comments.[69]

As discussed in TracFone's opening round comments, the Commission also could consider conditioning a provider's participation in the Lifeline program on the existence of revenue from sources other than Lifeline services.[70] Although TracFone, along with nearly every other commenter in this proceeding, continues to oppose categorical exclusions of providers from the Lifeline program, a retail-based threshold could serve as a slightly more tailored means to disqualify bad actors and better preserve the health of the program.

IV. CONCLUSION

TracFone urges the Commission to refocus its Lifeline reform efforts on ensuring that existing reforms are implemented correctly and prioritizing light-touch, pro-competitive values in any additional reforms adopted. Specifically, TracFone offers the following roadmap for Lifeline reform:

- ***First,*** the Commission should redouble its oversight of the ongoing implementation of existing reform efforts. To this end, the Commission should

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[67] Oklahoma Corporate Commission Public Utility Division Comments at 7-8; Free State Foundation Comments at 5; ITTA Comments at 3-4; Missouri Public Service Commission Comments at 7.

[68] Oklahoma Corporate Commission Public Utility Division Comments at 8.

[69] TracFone Comments at 52.

[70] *Id*. at 52-53.

ensure the National Verifier is executed timely and faithfully by encouraging USAC to more actively consult with stakeholders on best practices, and by working with USAC to eliminate any barriers to customers obtaining and retaining the service caused by technical or operational shortcomings.

- ***Second***, the Commission should discontinue or significantly alter certain anti-free-market reforms of previous Commissions. Specifically, the Commission should discontinue minimum service standards or, at a minimum, adopt TracFone's "units" proposal to allow provider flexibility in meeting the standards and promote consumer choice.
- ***Third,*** the Commission should consider conduct-based standards to weed out bad actors in a manner that is technology and business-model neutral.

Respectfully Submitted,

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